IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9246 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRADIP @ JADIO TAHKOREBHAI THAKKAR

Versus

STATE OF GUJARAT

Appearance:

MS. SUMAN PAHWA, Ld. Advocate FOR MR ASHISH M DAGLI, Advocate for Petitioner

MR.K.T.DAVE, A.G.P for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 28/02/2000

ORAL JUDGEMENT

1. Heard learned Advocate Ms. Suman Pahwa for Mr. A.M. Dagli, learned Advocate on behalf of the petitioner and Mr. K.T. Dave, learned A.G.P. appearing for the respondents nos.1, 2 and 3.

2. The detention order dated 31-5-1999 passed by the respondent no.2-Commissioner of Police, Vadodara against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act,1985 ('PASA' for short) is challenged by way of the present petition under Article 226 of the Constitution of India.

3. That the grounds of detention served and supplied to the detenu under Section 9(1) of `PASA', a copy of which is produced on record at running page 17 inter alia indicate that four criminal cases punishable under Section 379 read with Section 114 of the Indian Penal Code are registered at Karelibaug and Fateganj Police Stations. That all the four cases are pending for investigation. That during the investigation, the petitioner was apprehended on the basis of information received by the police.

3.1 The grounds further indicate that three witnesses on assurance of their anonymity have given their statement on 16-5-1999 against the anti-social activities of the petitioner and have referred to alleged incidents dated 5-3-1999, 20-3-1999 and 13-4-1999 respectively. That on the basis of the said material, the respondent no.2 as the detaining authority has come to the conclusion that the petitioner-detenue is a "dangerous person" within the meaning of Section 2(c) of `PASA'. That enforcement of general provisions of law being not sufficient to prevent the petitioner from continuing his prejudicial activities, and as such, detention order under `PASA' is passed.

4. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner at the Bar that the impugned order is bad in law on account of non application of mind, inasmuch as the petitioner was released on bail in cases registered vide C.R. no.253/98 and 13/99 on 24-5-1999 and in respect to cases registered vide C.R. no.198/97 and 253/97 on 28-5-1999. Thus, on the date of passing of the impugned order, the petitioner was ordered to be released on bail and while passing the impugned order, the detaining authority has failed to consider the aspect of claiming cancellation of bail as available under Section 437(5) of Cr.P.C.

5. The learned A.G.P. Mr. K.T. Dave has vehemently objected to the contention urged at the Bar and has submitted that the detaining authority has

observed in para 4 of the grounds of detention to the effect that the detaining authority was aware of the fact that the detenu was ordered to be released on bail in the cases registered against the detenu. However, no proceedings to claim cancellation of bail has been initiated on account of consideration of fact that same was likely to consume more time. That thereby, it cannot be said that impugned order suffers from the infirmity of non application of mind.

6. In order to support the submission, Mr. K.T. Dave learned A.G.P. has heavily relied on the observations made by the Hon'ble Supreme Court in the matter of SANJEEVKUMAR VS. UNION OF INDIA reported vide AIR 1990 SC 1202, particularly, in para 12 of the report.

6.1. That in Sanjeev Kumar's case (Supra), the Division Bench of the Supreme Court was considering the aspect of validity of detention order passed against the detenu who was in judicial custody and as per paragraph 12, as pointed out by the learned A.G.P., the Court rejected the argument advanced on behalf of the petitioner-detenu to the effect that if a bail application could be moved by the detenu as accused in a case registered against him, it could be opposed and even if he is enlarged on bail by the concerned Court, the matter could be questioned in a higher forum and on that aspect detention order should be held to be invalid. It may be noted that said submission was sought to be supported by the observations made by the Division Bench of the Supreme Court in the matter of Smt.SHASHI AGGARWAL V. STATE OF U.P. AND ORS., AIR 1988 SC 596 and RAMESH YADAV V. DISTRICT MAGISTRATE, ETAH, AIR 1986 SC 315. While rejecting the submission urged on behalf of the petitioner-detenu, the Division Bench has made the following observations:

"A review of the above decisions reaffirms the position which was settled by the decision of a Constitution Bench in Rameshwar Shaw's case.(AIR 1964 SC 334). The conclusion about validity of the detention order in each case was reached on the facts of the particular case and the observations made in each of them have to be read in the context in which they are made. None of the observations made in any subsequent case can be construed at variance with the principle indicated in Rameshwar Shaw's case for the obvious reason that all subsequent decisions were by benches comprised of lesser number of judges. We have dealt with this matter at some length because an attempt has been made for some time to construe some of the recent decisions as modifying the

principle enunciated by the Constitution Bench in Rameshwar Shaw's case."

7. It would be pertinent to note that in the said paragraph 12, the Division Bench has also referred to a decision rendered by Three Judge Bench in the matter of DHARMENDRA SUGANCHAND CHELAWAT AND ANR. V. UNION OF INDIA AND OTHERS, reported vide AIR 1990 SC 1196. That in the said case of DHARMENDRA SUGANCHAND, the Three Judge Bench of the Supreme Court after referring to the observations made by the Constitution Bench in the matter of RAMESHWAR SHAW V. DISTRICT MAGISTRATE, BURDWAN AND ANR,reported vide AIR 1964 SC 334 has made the following observations in paragraph 19 of the judgment:

"The decisions referred to above led to the conclusion that an order for detention can be validly passed against a person in custody and for that purpose it is necessary that the grounds of detention must show that (i) the detaining authority was aware of the fact that the detenu is already in detention, and (ii) there were compelling reasons justifying such detention despite the fact that the detenu is already in detention. The expression " compelling reasons " in the context of making an order for detention of a person already in custody implies that there must be cogent material before the detaining authority on the basis of which it may be satisfied that (a) the detenu is likely to be released from custody in the near future and (b) taking into account the nature of the antecedent activities of the detenu, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities."

8. In view of the above stated legal position, it would be necessary to consider in the instant case, whether the grounds of detention show that (i) whether the detaining authority was aware of the fact that the detenu was already in detention and (ii) that there were compelling reasons justifying such decision despite the fact that the detenu is already in detention.

8.1 That scrutiny of grounds of detention suggest that averments made therein disclose vague allegations against the petitioner-detenu to the effect that he used to possess deadly weapons like rampuri knife, gupti, sword etc., and has been using the same to terrorize the residents of Vadodara City. That the brother of the petitioner used to steal motor cycle and after changing the number plate, the petitioner used to ride on the

pillion seat of the said motorcycle driven by his brother and they roamed around the city and both of them have been snatching golden chain from the neck of women passing on the scooter as pillion rider. Not only that, the petitioner as accomplice of his brother have been terrorizing the witnesses to advance money on the security of such stolen golden chains and on refusal by the witnesses used to beat them.

8.2 The grounds of detention does not disclose any incident connected with case registered against the petitioner as stated hereinabove nor does it state particulars about the date, place and time where and when the petitioner as accomplice of his brother was found while snatching the golden chain from the pillion rider woman on scooter. Not only that, out of the four cases in which the petitioner is alleged to have been involved the first three cases appear to have been registered vide CR no.198/97 on 5-8-1997 at Karelibaug Police Station. The second case is registered vide CR no.235/97 on 19-9-1997 also at Karelibaug Police Station and the third case was registered vide CR no.253/98 on 12-8-1998 at Fatehganj Police Station. Thus, all these three cases cannot be said to be incidents which could be considered as antecedents of the petitioner-detenu in past proximate time. That the fourth case is registered at Fateganj Police Station vide CR no.13/99 dated 13-1-199. The grounds of detention is devoid of any material showing the involvement of the petitioner into alleged prejudicial activity of chain snatching in a case registered vide CR no.13/99. That the information supplied by anonymous witnesses do not disclose any incident of chain snatching nor does it disclose any information which could be verified to show the involvement of petitioner-detenu in prejudicial antisocial activity.

9. As discussed hereinabove, the detaining authority himself has observed that orders to release the petitioner on bail in all four cases have been passed, however, the procedure to claim cancellation of the same is likely to consume time. That on scrutiny of facts it appears that in cases registered vide CR no.253/98 and 13/99, the petitioner was arrested on 28-4-1999 and orders to release him on bail were passed on 24-5-1999. So far as the other two cases are concerned the petitioner was arrested on 25-4-1999 and 28-4-1999 and orders to release him on bail were passed on 28-5-1999. That in affidavit-in-reply the detaining authority has stated on oath vide paragraph 10 that at initial stage the name of the accused (petitioner) was not disclosed in

any of the registered case. However, on 31-3-1999 during the investigation of a case registered at village Achoda, District Baroda, the brother of the present petitioner-one Shailesh Thakorebhai Thakkar was arrested under Section 41(1)(d) of Cr.P.Code for possessing stolen property which he could not account for. That on enquiry said Shailesh Thakorebhai disclosed the name of present petitioner and thereafter on recording the statement of said Shailesh as accomplice and the present petitioner as of accused, facts in respect to chain snatching incidents had come to light. That these facts are conspicuously absent in the grounds of detention if the same is perused carefully. Under the circumstances, in the absence of any credible or cogent material apparent in the grounds of detention, it is difficult to hold that the grounds of detention discloses the facts constituting, "compelling reasons" as said by the Supreme Court to pass a detention order against a person who is already in custody; with a view to see that such person is required to be prevented forthwith, otherwise if released on bail is likely to indulge into prejudicial activity as per his background and antecedent history.

10. Furthermore, it is also necessary to consider the aspect of non claiming cancellation of bail for which orders are passed in favour of the petitioner. That though the Sponsoring Authority has come to know about the fact that orders to release the petitioner on bail have been passed on 24-5-1999 and 28-5-1999 but the petitioner has not been released pursuant to such orders till proposal to detain the petitioner is presented, the detaining authority without mentioning such facts in the grounds of detention has observed in the grounds of detention on 31-5-1999 to the effect that it was likely to consume time.

11. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND ORS. (1995 (2) G.L.H. 1134), the Division Bench of this Court has expressed the view that non consideration of less drastic remedy like cancellation of bail under Section 437 (5), Cr.P.C. amounts to non application of mind vitiating the detention order. That the said view has been approved and endorsed in the proceedings of Letters Patent Appeal no.1056/99 decided on 15-9-1999 by this Court (Coram: C.K. Thakkar & A.L. Dave, JJ.).

12. As held by the Appellate Bench of this Court in the above stated authority, in the instant case, though the petitioner was in judicial custody, the detaining authority has stated in the grounds of detention that the

petitioner is likely to be released on bail and is likely to continue his antisocial activities, and as such detention order is necessary. This observation of the detaining authority suggests that there was no consideration that inspite of taking action the petitioner was likely to be released and continued to be on bail, and also likely to indulge into prejudicial activities.

13. On the basis of the aforesaid discussion, I am constrained to hold that in the instant case, non application of mind is apparent on the part of the detaining authority for the reasons stated hereinabove , and as such, the detention order could hardly be sustained.

14. The petitioner has also raised a contention that representation made by the petitioner dated 5-10-1999 has not been expeditiously decided by the respondent. That one Mr. J.R. Rajput, Secretary, Home Department, Sachivalaya, Gandhinagar, has filed affidavit-in-reply dated 23-2-2000 and in paragraph 2 of the affidavit-in-reply has explained the fact that the said representation was received on 26-10-1999 and thereafter it was cleared by the Section Officer, Deputy Secretary (Law) and Chief Secretary on 26-10-1999, 27-10-1999 and 28-10-1999 respectively and as the Home Department has rejected the same on 29-10-1999, the decision was communicated to the detenu through Supdt.Jamnagar Jail. In view of the same, it cannot be said that inordinate delay was caused in considering the representation which has affected the valuable right of the petitioner as contended by them.

15. In view of the foregoing discussion, the petition is allowed. The detention order dated 31-5-1999 passed by the respondent no.2 against the petitioner is hereby quashed and set aside. The petitioner-Pradip alias Jadio Thakorebhai Thakkar is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

At this stage, learned AGP Mr. K.T. Dave has made an oral request to stay the operation of the order to enable the respondent no1.-State of Gujarat to avail appropriate remedy against the present order. Hence, operation of this order is stayed for a period upto 15th March, 2000.

(A.K.Trivedi,J.)

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